

CALIFORNIA STATE PERSONNEL BOARD MEETING
801 Capitol Mall
Sacramento, California

Public Session Location - Room 150

Closed Session Location - Room 141

FULL BOARD MEETING MINUTES**

NOVEMBER 4, 2003

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

William Elkins, President
Sean Harrigan, Member
Frank J. Quintero, Member
Maeley Tom, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised on the following:

- A. State Personnel Board staff met with a reporter from the Contra Costa Times who is researching disciplinary actions involving public employees.
- B. At the request of the Transition Team, State Personnel Board staff prepared and provided them with information concerning regulations adopted by the State Personnel Board since 1999.

**The State Personnel Board Summary Minutes can be obtained at the following Internet address:
<http://www.spb.ca.gov/calendar.htm>

- C. Naomi Yasui, Executive Assistant for Board members and the Executive Officer has retired after serving more than 14 years in this capacity.

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on the following:

Litigation

- A. Association of California State Attorneys & Administrative Law Judges (ACSA) v. Department Personnel Administration - The State Personnel Board filed opposition to petition for review on October 24, 2003.
- B. State Personnel Board v. Department of Personnel Administration (Post and Bid) - An oral argument is scheduled for November 17, 2003; at 2:00 p.m. The Court is allowing 30 minutes per side.
- C. Department of Justice v. State Personnel Board/Peter Smith - The Court of Appeal, Second Appellate District, reversed the decision of the Los Angeles Superior Court denying a writ in this case. The appellant was originally dismissed for his conduct in conducting drug investigation operations of clandestine methamphetamine labs, but the State Personnel Board (SPB) modified the dismissal to a 30 day suspension. The charges related primarily to violations of safety requirements and removal of evidence. The superior court denied the department's petition for writ of mandate. The decision orders the superior court to grant petition and to compel SPB to set aside that portion of its opinion imposing a suspension for 30 working days and to reinstate the penalty of dismissal originally imposed by the Department of Justice (DOJ). The decision rejects DOJ's argument that the Board's decision fails to comply with the statutory mandate to include the factual and legal basis for its decision.
- D. Franklin v. State Personnel Board/California Youth Authority - The Court of Appeal, Second Appellate District, overturned a trial court ruling that had ordered the State Personnel Board to set aside the dismissal of Franklin. The Court found substantial evidence which supported the Board's decision and that the Board did not abuse discretion in dismissing her from employment. The Court rejected Franklin's request

that the matter be remanded to the Board in light of a report of the Office of the Inspector General that criticized the investigation regarding Franklin. The Court found sufficient evidence which supports finding and legal conclusions of the Board, noting that the Administrative Law Judge (ALJ) received witness testimony, that the witnesses were subject to cross-examination, and that the ALJ assessed credibility and resolved conflicts in the evidence. Furthermore, Franklin filed a whistleblower retaliation complaint and had opportunity to present the report at that hearing.

- E. Elliot v. State Personnel Board/California State University - San Diego Superior Court denied the petition for writ in this case. Elliot had argued that the Board improperly allowed an amendment to the charging document at the hearing; the Court held amendment not prejudicial and Elliott was given adequate opportunity for continuance. Elliott also argued that the jury verdict in the sexual harassment case should be considered. The Court affirmed the Board's upholding of termination based on unprofessional conduct.
- F. Sulier v. California Department of Corrections (CDC)/CDC v. Sulier - Sulier is suing to enforce the decision of the State Personnel Board; CDC cross petitioned to overturn the Board's decision. A hearing is scheduled for Friday, November 7, 2003.

Other

- A. On October 22, 2003, the State Personnel Board's State Employee Mediation Program held a successful informational seminar at its Sacramento location.
- 4. REPORT ON LEGISLATION - Sherry Hicks

No report given.
 - 5. HEARING - PSC NO. 03-06, 03-07 and 03-08
Appeal of the State Compensation Insurance Fund from the Executive Officer's June 13, 2003 disapproval of contracts

for payroll auditing, clerical and adjusting services in response to the review request filed by the California State Employees Association.

Persons Participating:

Judith D. Sapper, Attorney in Charge, representing State Compensation Insurance Fund
Harry J. Gibbons, Attorney at Law, representing California State Employees Association

ACTION: Submitted

6. ORAL ARGUMENT

Oral argument in the matter of RICHARD COELHO, CASE NO. 02-1796A. Appeal from medical term demotion/transfer. Department of Fish and Game.

Persons Participating:

Marguerite Seabourn, Assistant Chief Counsel, Department of Personnel Administration, representing Department of Fish and Game
Richard Coelho, Appellant, Pro Per, Department of Fish and Game

ACTION: Submitted

BOARD ACTIONS

7. STATE PERSONNEL BOARD SUMMARY MINUTES OF OCTOBER 21, 2003

ACTION: Adopted on November 4, 2003.

VOTE: Elkins, Harrigan, Tom - Aye. Board member Quintero not voting.

8. ACTION ON SUBMITTED ITEMS

(See Minute Page 14 for actions)

9. EVIDENTIARY CASES

On November 4, 2003, the Board adopted by vote as indicated below the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Harrigan, Quintero, Tom - Aye. [NOTE] Board member Quintero voted only on Item "D", Proposed Decisions.

A. BOARD CASES SUBMITTED

These cases were submitted at a prior meeting.

BENJAMIN JOHNSON, CASE NO. 02-2700

Appeal from five-percent reduction in salary for six months

Correctional Officer

Imperial - State Prison

Department of Correction

ACTION: On November 4, 2003, adopted Board decision modifying five-percent reduction in salary for six months to 5% reduction in salary for 1 month and awarded back pay, interest and benefits

VOTE: Elkins, Harrigan, Tom - Aye.

HARRY MILLER, CASE NO. 02-0160

From demotion and reassignment from the position of Correctional Sergeant with the Transportation Unit at Sacramento to the position of Correctional Officer with Norco - California Rehabilitation Center, Department of Corrections

NO ACTION

MOUNZER NAJJAR, CASE NO. 02-3417

Appeal from non-punitive termination

Transportation Engineer (Electrical)

Department of Transportation

ACTION: On November 4, 2003, adopted Board decision modifying non-punitive termination to a non-punitive unpaid leave of absence and ordering reinstatement, back pay, interest and benefits

VOTE: Elkins, Harrigan, Tom - Aye.

LAWRENCE SCHAEFER, CASE NO. 02-0079

Appeal from 60-calendar days suspension

and reassignment from the position of

Correctional Officer with the Transportation

Unit, Department of Corrections at Sacramento to the position of Correctional Officer

Chino - State Prison

NO ACTION

ZEWDIE SENBETU, CASE NO. 02-1955

Appeal from non-punitive termination
Transportation Engineer (Civil)
Department of Transportation
ACTION: On November 4, 2003, adopted Board decision
modifying non-punitive termination to a non-punitive
unpaid leave of absence and ordering reinstatement,
back pay, interest and benefits
VOTE: Elkins, Harrigan, Tom - Aye.

B. BOARD CASES PENDING

Oral/Written Arguments for Board Consideration on
November 4, 2003

These cases were on calendar to be argued at this
meeting or to be considered by the Board in closed
session based on written arguments submitted by the
parties.

RICHARD COELHO, CASE NO. 02-1796R
Appeal from constructive medical termination
Fish and Game Warden
Department of Fish and Game
ACTION: Oral argument held and matter taken under
submission

C. CHIEF COUNSEL RESOLUTIONS

TERRY VIVIAN, CASE NO. 00-3184
Appeal from dismissal
Painter II, CF
Women's Facility, Stockton
Department of Corrections
ACTION: The Board adopted a resolution vacating the
stipulation for settlement and referring this matter for
evidentiary hearing, unless the parties request a
settlement conference

JACK BRON, CASE NO. 02-3688
Appeal from medical termination/demotion transfer
Youth Correctional Officer
Southern Reception Center, Norwalk
California Youth Authority
ACTION: The Board adopted a resolution remanding this
matter for evidentiary hearing

- Court Remands

These cases have been remanded to the Board by the court for further Board action.

GAYLE MCCORMICK, 99-1549C

Appeal from demotion

Correctional Captain

Department of Corrections

Written briefs submitted. Matter ready for decision by

FULL Board

NO ACTION

- Stipulations

These stipulations have been submitted to the Board for Board approval, pursuant to Government Code, section 18681, by the Chief Counsel's Office.

NONE

D. ADMINISTRATIVE LAW JUDGE'S (ALJ) PROPOSED DECISIONS

- New Proposed Decisions

These are ALJ proposed decisions submitted to the Board for the first time for a vote.

LELAND ASHFORD, CASE 03-0959

Appeal from demotion

Wildlife Habitat Supervisor II

Department of Fish and Game

ACTION: Demotion sustained

JEANE CHURCH, Case No. 03-0637

Appeal from dismissal

Psychiatric Technician

Department of Mental Health

ACTION: Dismissal sustained

RANDALL DODSON, Case No. 03-1587

Appeal from non-punitive termination

Caltrans Equipment Operator I

Department of Transportation

ACTION: Proposed decision rejected by Board. Board to decide case itself

DOUGLAS ELINSON, Case No. 03-2271

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Appeal from 20-working day suspension
Disability Insurance Program Representative
Employment Development Department
ACTION: Suspension revoked

PAUL H. KEMP, Case No. 00-1427
Appeal from 60-working day suspension
Teacher Assistant - Youth Correctional
Reception Center and Clinic - Sacramento
Department of the Youth Authority
ACTION: 60-working day suspension modified to a 5%
reduction in salary for six-months, and awarded back
pay, interest and benefits

PAUL H. KEMP, Case No. 01-2841
Appeal from dismissal
Teacher Assistant - Youth Correctional Reception Center
and Clinic - Sacramento
Department of the Youth Authority
ACTION: Proposed decision rejected by Board. Board to
decide case itself

JAVIER PADILLA, Case No. 03-1809
Appeal from formal reprimand
Public Safety Dispatcher II
California Highway Patrol
ACTION: Formal reprimand sustained

MARCO RODRIGUEZ, Case No. 03-1771E
Appeal from discrimination complaint
Information Systems Analyst
Department of Insurance
ACTION: Discrimination complaint dismissed

SUSAN SWANBERG, Case No. 03-1772E
Appeal from denial of reasonable accommodation
Account Clerk II
Department of Boating and Waterways
ACTION: Appeal dismissed

JAMES C. WHITE, Case No. 03-1248
Appeal from demotion
Caltrans Maintenance Supervisor
Department of Transportation
ACTION: Demotion sustained

- Proposed Decisions After Board Remand

These are ALJ proposed decisions issued after the Board has remanded the case to the ALJ for further findings or to comply with a court writ.

NANCY VALENTINO, Case No. 03-0699
Appeal from dismissal from the position of Psychiatric Technician
Department of Developmental Services
ACTION: Administrative Law Judge's proposed decision rejected by Board. Board to decide case itself

- Proposed Decisions Taken Under Submission At Prior Meeting
These are ALJ proposed decisions taken under submission at a prior Board meeting, for lack of majority vote or other reason.

BEVERLY WILSON, CASE NO. 03-1150
Appeal from dismissal
Administrative Support Assistant II
California State University
ACTION: Proposed decision rejected by Board and remanded to Administrative Law Judge

- Proposed Decisions After State Personnel Board (SPB) Arbitration
These are ALJ proposed decisions issued after a Unit 5 "arbitration" per the Unit 5 MOU and agreement with SPB.

WILLIAM BREWER, CASE NO. 03-2696
Appeal from five days suspension
Officer
California Highway Patrol
ACTION: Five days suspension modified to a two day suspension

E. PETITIONS FOR REHEARING

- On ALJ Proposed Decisions Adopted By The Board
The Board will vote to grant or deny a petition for rehearing filed by one or both parties, regarding a case already decided by the Board.

GILBERT MARTINEZ, CASE NO. 02-2878P

Appeal from Dismissal
Manager II Health Facilities Evaluator
Department of Health Services
ACTION: Petition for rehearing filed by
Appellant denied

RAMAIYER SAINATH, CASE NO. 02-4046
From ten percent reduction in salary for twelve months
Transportation Engineer, Electrical
Department of Transportation
ACTION: Petition for rehearing filed by
Appellant denied

- On Whistleblower Notice of Findings
The Board will vote to grant or deny a petition for rehearing filed by one or both parties, regarding a Notice of Findings issued by the Executive Officer under Government Code, section 19682 et. seq. And 2 California Code of Regulations, section 56 et. seq.

NONE

10. RESOLUTION EXTENDING TIME UNDER GOVERNMENT CODE SECTION
18671.1 EXTENSION (See Minute Page 17)

11. NON-EVIDENTIARY CASES

A. WITHHOLD APPEALS

On November 4, 2003, the Board adopted the following decisions presented by Laura Aguilera, Assistant Executive Officer, California State Personnel Board.
VOTE: Elkins, Harrigan, Quintero, Tom - Aye.

JOSE CASTANEDA, CASE NO. 02-2061
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

FELIX ESCOBEDO, CASE NO. 03-0591
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

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JOSELITO GUTIERREZ, CASE NO. 02-3253
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

JOEY HERNANDEZ, CASE NO. 03-0534
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

NICK HERNANDEZ, CASE NO. 03-0506
Correctional Officer
Department of Corrections
ACTION: DENIED

DEWEY KIEFER, CASE NO. 02-3214
Classification: Correctional Officer
Department of Corrections
ACTIONS: GRANTED

ABEL LONGORIA, CASE NO. 03-0277
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

LEONARD LUNA, CASE NO. 03-0464
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

REGINALD MCATEE, CASE NO. 03-0511
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

DALE NOLEN, CASE NO. 03-0532
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

OSCAR PERALES, CASE NO. 02-3600
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

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SOLITO REYES, CASE NO. 02-3073
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

STEVEN RICHARDS, CASE NO. 02-2807
Classification: Correctional Officer
Department of Corrections
ACTION: Retracted from agenda by SPB staff, not for
Board consideration

JAMES VARELA, CASE NO. 03-0452
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

B. MEDICAL APPEALS

On November 4, 2003, the Board adopted the following
decisions presented by Laura Aguilera, Assistant
Executive Officer, California State Personnel Board.
VOTE: Elkins, Harrigan, Quintero, Tom - Aye.

WILLIAM CROWLEY, CASE NO. 03-0225
Classification: Public Safety Dispatcher II, CHP
California Highway Patrol
ACTION: GRANTED

OMAR GARCIA, CASE NO. 03-0335
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

SCOTT GENTRY, CASE NO. 03-1211
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

LLOYD HOUCHIN, CASE NO. 03-0758
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

CAROL PELLETIER, CASE NO. 03-1531
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

12. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER
CONSIDERATION

(1) DIRECTOR, CONSUMER AND INDUSTRY OUTREACH

The Department of Insurance requests to establish the above position to the CEA allocation. The Director, Consumer and Industry Outreach works to develop and target the Department's external activities using advisory boards, organize task force, community forums, and town hall meetings, in addition the position is responsible for the recruitment, development and management of these groups to identify key issues and develop policy approaches to address those issues identified.

ACTION: Noted

A D J O U R N M E N T

SUBMITTED

1. TEACHER STATE HOSPITAL (SEVERLY), ETC. Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002).

NO ACTION

2. VOCATIONAL INSTRUCTOR (SAFETY) (VARIOUS SPECIALTIES).
Departments of Mental Health and Developmental Services.
(Hearing held December 3, 2002).

NO ACTION

3. ANSWERS OR APPEALS FILED WITH STATE PERSONNEL BOARD
State Personnel Board (SPB) staff is proposing to adopt new Rule 63 to require, in part, that answers or appeals filed with SPB, requesting that a hearing or investigation be conducted by SPB, notify the responding party of all planned affirmative defenses and requests for relief.
(Hearing held February 3, 2003).

NO ACTION

4. TELEVISION SPECIALIST (SAFETY)
The Department of Corrections proposes to establish the new classification Television Specialist (Safety) by using the existing Television Specialist class specification and adding "Safety" as a parenthetical to recognize the public aspect of their job, additional language will be added to the Typical Tasks section of the class specification and a Special Physical Characteristics section will be added.
(Presented to Board March 4, 2003).

NO ACTION

5. PSC NO. 03-04
Appeal of the California Department of Education and McGeorge School of Law from the Executive Officer's April 30, 2003, disapproval of a contract for special education mediation conferences and due process hearings.
(Hearing held October 7, 2003).

NO ACTION

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

★ ★ ★ ★ ★

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on November 4, 2003.

VOTE: Elkins, Harrigan, Quintero, Tom - Aye.

WALTER VAUGHN
Executive Officer
California State Personnel Board